

IV. Remarks

Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks. Applicants note with appreciation the withdrawal of the May 16, 2006 restriction requirement. Regarding the objection to the drawings, Applicants have amended the specification to delete reference to reference numeral 75. Claims 2, 3, 18, 22, 23, 29, and 30 were rejected in the office action of January 31, 2007 (hereafter referred to as the "Office Action") for being drawn to non-statutory subject matter. Applicants have amended these claims and believe that these claims as amended are drawn to statutory subject matter.

Additionally, claims 1 and 3-36 were rejected in the Office Action for being anticipated by US Patent 5,683,389 to Orsak (hereafter referred to as "Orsak"). While Applicants do not agree with the characterization of Orsak's teaching in the Office Action, Applicants have amended independent claims 1, 13, 19, 29, 30, 31 and 34 and canceled independent claim 36 to expedite the allowance of claims 1-34. Appropriate amendments to the dependent claims have also been made to accommodate the amendments made to the independent claims. Dependent claim 37 has been added. Accordingly, claims 1-19, 21-34 and 37 remain pending in this application. An explanation of the distinction between Orsak and claims 1-34 and 37 as amended is provided below.

V. Argument

A rejection under 35 U.S.C. § 102 requires that a prior art reference teaches, either expressly or inherently, each and every claim limitation. *Hybritech v. Monoclonal Antibodies, Inc.*, 231 USPQ 81 (Fed. Cir. 1986). Claim 1 as amended recites:

A first clamp assembly comprising: a bracket operable to removably mount to an external fixator, the external fixator having a first longitudinal axis; and a connector rod fastener disposed on a substantially planar side of the bracket, the connector rod fastener being operable to receive a connector rod having a second longitudinal axis, whereby the first longitudinal axis is in a spaced relation with the second longitudinal axis when the connector rod is received in the connector rod fastener....

Independent claims 13, 29, 30 and 31 include similar limitations.

Missing in Orsak is at least “a connector rod fastener disposed on a substantially planar side of the bracket.” Orsak discloses a screw 81, which is characterized as a connector rod fastener in the Office Action, being inserted through the sides of the clamp 75. *Orsak, column 4, lines 46-64*. This teaching of a connector rod fastener (screw 81) being inserted through the clamp 75 is clearly distinguishable from the amended subject matter of claim 1 and other independent claims. Moreover, claim 1 as amended and all other independent claims require the connector rod fastener to be “operable to receive a connector rod having a second longitudinal axis.” Orsak’s screw 81, however, is clearly not operable to receive a connector rod having a longitudinal axis. *Id.* Indeed, Fig. 5 of Orsak clearly depicts the screw 81 positioned apart from the proximal rod section 17. Accordingly, amended independent claims 1, 13, 29, 30 and 31 are patentably distinct from the teachings of the Orsak reference.

Independent claims 19 and 34 have also been amended to further clarify the claimed subject matter in view of the Orsak reference. Claim 19, as amended, requires a clamp assembly head operable to engage the connector rod. Claim 34 includes a similar limitation. Orsak, however, does not teach such a limitation. Rather, referring to Fig. 3, Orsak teaches the use of a cap screw 44 that passes through an opening 63 of clamp sections 41, 42. *Orsak, column 3, lines 57-59*. Thus, no portion of cap screw 44 engages, or is operable to engage, the distal rod section 17. Accordingly, amended independent claims 19 and 34 are patentably distinct from the teachings of the Orsak reference.

VI. Conclusion

Applicants believe that independent claims 1, 13, 19, 29, 30, 31 and 34 are now in condition for allowance. As the dependent claims depend from and further limit the independent claims, respectively, these claims are now in condition for allowance as well.

The Commissioner is hereby authorized to deduct \$1020.00 to cover the fees associated with a three-month extension of time. If any additional fees are required to complete this filing, the Commissioner is authorized to charge those fees, or credit any overpayment, to Account No. 13-0480, Attorney Docket No. 24179785.010031US.

If the Examiner has any questions regarding this Amendment and Response to Office Action or the Application in general, Examiner is invited to contact the Applicants' attorney at the below-listed telephone number.

Respectfully submitted,

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